

RECEIVED

FEB 24 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of)	MM Docket No. 93-264
)	
FRANK B. DUROSS)	File No. BPH-920512MC
)	
KENNETH F. ROSER, JR.)	File No. BPH-920513MI
)	
For Construction Permit for)	
a New FM Station on)	
Channel 250A in)	
Whitesboro, New York)	

To: Administrative Law Judge
Joseph Gonzalez

**MASS MEDIA BUREAU'S COMMENTS ON
JOINT PETITION FOR APPROVAL OF SETTLEMENT AGREEMENT
LEAVE TO FILE AMENDMENT AND WITHDRAWAL OF APPLICATION**

1. On February 8, 1993, Frank B. DuRoss ("DuRoss") and Kenneth F. Roser, Jr. ("Roser") filed a joint petition for approval of settlement agreement, leave to file amendment and withdrawal of application. The Mass Media Bureau submits the following comments.

2. The proposed settlement contemplates the dismissal of DuRoss' application and the amendment of Roser's application to reflect the merger of DuRoss' and Roser's interests into a new entity, Professional Broadcasting Corporation ("PBC"). DuRoss and Roser will each hold 50% of the voting stock of PBC. No payment will be made by either applicant to the other. Each will bear responsibility for his own expenses incurred prior to the merger, and each will contribute equally for expenses generated by PBC in the construction and operation of the proposed radio

No. of Copies rec'd
List ABCDE


Out


station, including the payment of \$15,000 to former applicant Kevin O'Kane for the dismissal of his application. In addition to amending his application to substitute PBC as the new applicant, Roser seeks to modify the height above average terrain and effective radiated power of his proposal. The settlement, related amendment and request for dismissal of DuRoss' application are contingent upon denial of DuRoss' November 18, 1993, motion to enlarge issues against Roser.

3. Review of the settlement agreement, including the declarations of the applicants' respective principals, shows that the applicants have complied with the requirements of Section 73.3525 of the Commission's Rules, which implement Section 311(c)(3) of the Communications Act of 1934, as amended. The applicants show that their applications were not filed for an improper purpose; and that approval of the joint petition will serve the public interest. Moreover, the proposed merger of DuRoss' and Roser's interests appears to be bona fide because each will share equally in the success or failure of the proposed venture. See Settlement Agreements, 6 FCC Rcd 85 (1990), modified, 6 FCC Rcd 2901, 2902 (1991); Venton Corporation, 90 FCC 2d 307 (1982). Finally, the Bureau's engineering staff has reviewed the proposed technical modifications to Roser's application and has determined that they are in conformance with the Commission's engineering rules.

4. Accordingly, in the event the Presiding Judge does not enlarge the issues in this proceeding relative to Roser's financial certification, the Bureau supports grant of the joint petition for approval of settlement agreement, leave to file amendment and withdrawal of application; grant of Roser's application as amended; dismissal of DuRoss' application; and termination of this proceeding.

Respectfully submitted,
Roy J. Stewart
Chief, Mass Media Bureau


Charles E. Dziedzic
Chief, Hearing Branch


James W. Shook
Attorney
Mass Media Bureau

Federal Communications Commission
2025 M Street, N.W.
Suite 7212
Washington, D.C. 20554
(202) 632-6402

February 24, 1994

CERTIFICATE OF SERVICE

Michelle C. Mebane, secretary of the Hearing Branch, Mass Media Bureau, certifies that she has on this 24th day of February, 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Comments on Joint Petition for Approval of Settlement Agreement, Leave to File Amendment and Withdrawal of Application**" to:

Arthur V. Belendiuk, Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, N.W., Suite 510
Washington, D.C. 20036

J. Richard Carr, Esq.
P.O. Box 70725
Chevy Chase, Maryland 20813-0725

Richard J. Hayes, Jr., Esq.
13809 Black Meadow Road
Spotsylvania, Virginia 22553

Michelle C. Mebane
Michelle C. Mebane